IUCN Environmental Law Programme 2011

The Year in Review

Prepared by the IUCN Environmental Law Centre, Bonn
IUCN Environmental Law Programme

The Year in Review 2011

(1) Introduction

The International Union for the Conservation of Nature (IUCN) is an environmental network made up of over 1000 members including States, government agencies and national and international NGOs and whose headquarters are in Gland, Switzerland. The mission of the IUCN Environmental Law Programme (ELP) is to advance environmental law through the development of legal concepts and instruments, and to facilitate the use of environmental law as a tool to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable.

The ELP is an integrated programme of activities that assists decision makers with information, legal analysis, advisory services, legislative drafting, mentoring and capacity building at national, regional and global levels. The Programme also provides the opportunity and a forum for governments, non-governmental organisations and others to network and to share information and discuss ideas. ELP activities are carried out by the Commission on Environmental Law (CEL) and the Environmental Law Centre (ELC). As one of the IUCN’s six Commissions, CEL consists of an extensive global volunteer network of over 700 environmental law specialists in more than 204 countries. It is divided into nine Specialist Groups and two Inter-commission Task Forces. The ELC comprises an office of legal officers and information specialists in Bonn, Germany working in collaboration with CEL members, IUCN staff, lawyers and focal points in IUCN headquarters and regional and country offices worldwide. The ELC also houses an extensive library consisting of environmental law holdings and is the Management Unit for ECOLEX, “The Gateway to Environmental Law” (see ECOLEX.org), a web-based information system operated as a joint initiative of the Food and Agriculture Organization (FAO), IUCN and the United Nations Environment Programme (UNEP).

2011 was a pivotal year for two reasons: first because of the need to build on the achievements of 2010 (e.g. adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (CBD)); second, it is the year preceding a number of major environmental conferences, including the IUCN Fifth World Conservation Congress and the United Nations Conference on Sustainable Development (Rio +20). These past and future developments have guided the ELP’s actions in 2011, which are expanded upon in the following sections.

(II) Thematic Issues

(A) Biodiversity

(i) Access and Benefit Sharing

Access and benefit-sharing (ABS) makes up the third pillar of the Convention on Biological Diversity (CBD) and as a result, it is intrinsically linked to the CBD’s other two pillars, namely the conservation and the sustainable use of biodiversity. Benefit-sharing encourages States as well as indigenous and local communities (ILCs) to conserve and sustainably use their biological diversity...
and at the same time rewards them for such efforts. The Convention on Biological Diversity recognizes the sovereign rights of States over natural resources in areas within their jurisdiction. Parties to the Convention therefore have the authority to determine access to genetic resources in areas within their jurisdiction, and also have the obligation to take appropriate measures to share the benefits derived from their use. The ELC has been working on ABS issues and supporting the negotiations relating thereto for over 10 years, and thus welcomed the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS Protocol) on 29 October, 2010 at CBD COP10 in Nagoya, Japan. Although criticisms remain, the adoption of the Protocol is a huge step forward, making Nagoya one of the most successful meetings in the CBD history to date. Indeed the Protocol creates an international framework which provides for concrete measures, rules and procedures to implement the CBD’s third goal. The ELC has continued to be involved in the development of the CBD ABS framework throughout 2011 and has also focused on providing information for and drawing attention to, the need for ABS provisions covering Marine Areas Beyond National Jurisdiction (MABNJ).

The ELC has participated in the CBD ABS process in a technical legal advisory capacity at a number of meetings: in February 2011 the ELC participated in the International Consultative Meeting on ABS in Chennai, India, jointly organised by UNEP and the Indian government. The objective of the meeting was to discuss and analyze the CBD Nagoya Protocol on ABS at expert level in order to speed up the ratification and implementation process. In September 2011, as part of its collaboration with the German Federal Ministry for Environment, Nature Conservation and Nuclear Safety (BMU) the ELC supported the planning and implementation of the 4th German Roundtable on ABS. The objective of the Roundtable was to inform German ABS stakeholders, including representatives from different Ministries, the private sector, the research community, as well as civil society, about: the outcomes of ABS negotiations, the main obligations from a user country’s perspective, the planned process of signature and ratification in the EU, ways of implementing the Nagoya Protocol and preparations for the first meeting of the Parties to the Nagoya Protocol.

The ELC has also been working on the publication of an IUCN explanatory guide to the Nagoya Protocol on Access and Benefit-Sharing. Co-funded by the German Federal Ministry of Environment, Nature Conservation and Nuclear Safety (BMU), the guide is a collaborative effort between the ELC, the IUCN Global Policy Unit with input from a number of external ABS experts. The project was launched in a side event at the first meeting of the Open-ended Ad Hoc Intergovernmental Committee on the Nagoya Protocol on ABS from 6-10 June 2011 in Montreal, Canada. The first draft of the guide was presented on 10 November 2011 in a side event at the 15th meeting of the CBD’s Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA). The first review workshop which was attended by representatives from the CBD Secretariat, UNEP, the ABS Capacity Building Initiative, and others, took place at the ELC in December 2011. The final publication in English will be launched at the eleventh meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD COP 11) that will take place in Hyderabad, India, 8-19 October, 2012. Translations of the Guide in French and Spanish will be published thereafter with the financial support from the Ministry of Foreign Affairs of Denmark (DANIDA).

The ELC also participated in two expert workshops addressing the linkages between ABS implementation on the one hand, and protected areas and forest governance on the other hand – considering resource ownership and utilization questions as key. The first workshop “International Experts Meeting on ABS and Protected Areas” was organized by the IUCN Protected Areas
Programme, UNEP and Natural Justice in July 2011 at the IUCN Headquarters in Gland, Switzerland. The second workshop (“Expert Meeting on - ABS, Forests and Protected Areas - the resource ownership interface”) was organized by the ABS Capacity Building Initiative in December 2011 in Bonn, Germany.

(ii) Marine Biodiversity

2011 saw the continuation of the ELC’s work for BMU on marine genetic resources in areas beyond national jurisdiction (ABNJ). The overall objective was to support the German Ministry, and indirectly the European Union, in developing legal and policy options for governing the high seas and seabed area beyond the limits of national jurisdiction in order to promote conservation and equitable use. The need for such work stems from a legal and now political dispute regarding the legal status of marine genetic resources in areas beyond national jurisdiction under the UN Convention on the Law of the Sea. This legal dispute revolves around a larger issue regarding the equitable use of marine resources beyond national jurisdiction and has severe impacts on collective efforts to conserve the global ocean in the future. Specifically, the ELC prepared a background paper exploring practical options for the equitable sharing of benefits derived from the utilization of marine genetic resource in ABNJ including a discussion of potential procedural and substantive options to close the existing legal gaps related to ABS under the United Nations Convention on the Law of the Seas (UNCLOS).

The ELC also attended the annual meeting of the UN Ad hoc Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (WG BBNJ) in June 2011, as a technical legal advisor to the German delegation.

Finally, after months of preparation, the ELC in collaboration with the German Federal Agency for Nature Conservation (BfN) hosted the international seminar on conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction from 1-3 December 2011 in Bonn, Germany. The list of participants included 13 government representatives from EU Member States, the European Commission, 9 representatives from non-EU States, the CBD Secretariat, the Secretariat of the OPSAR Convention, as well as external experts (including the IUCN Global Marine and Polar Programme). Chaired by the ELC the seminar focused on three main areas: the establishment and management of Marine Protected Areas (MPAs), the issue of Access and Benefit Sharing (ABS) related to the use of Marine Genetic Resources (MGRs) in areas beyond national jurisdiction (ABNJ), and the necessity of an implementing agreement under the UNCLOS. Following presentations on these topics by a number of attending legal and policy experts (including a presentation on ABS options for MGRs in ABNJ by the ELC), the participants formed working groups to discuss the key issues and consider potential ways forward to facilitate conservation and sustainable use of marine biodiversity beyond national jurisdiction. The discussions included, but were not limited to, the consideration of a potential implementing agreement to the UNCLOS as a step towards a more comprehensive legal regime for conservation in marine areas beyond national jurisdiction.

The IUCN-CEL Oceans, Coasts and Coral Reefs Specialist Group hosted a meeting in Istanbul of the scientific experts of the Group of Experts on the Eastern Mediterranean Sea. The objective was to share information on various issues of importance affecting biodiversity in the eastern Mediterranean Sea. The workshop succeeded in bringing together scientists and lawyers from Cyprus, Egypt, Greece, Israel, Lebanon, Syria and Turkey. The issues discussed during the workshop were invasive species, the deep sea, seamounts and canyons, fisheries, oil pollution,
artificial reefs, potential impacts of global change such as climate change related impacts including oceans acidification, and temperature fluctuations. The final outcome of the workshop was a joint statement according to which the participants agreed that:

- Protection of biodiversity requires healthy ecosystems;
- Protection of overall biodiversity in the eastern Mediterranean requires building resilience of ecosystems especially if the source of threat cannot be controlled;
- Developing a network of MPAs is an important element in building the resilience of the marine ecosystem;
- All countries in the eastern Mediterranean need to cooperate at different levels, from national to areas beyond national jurisdiction;
- Cooperation between the western and eastern basins is needed;
- EU countries of the western basin countries should provide greater support to all countries in the eastern Mediterranean;
- Expert meetings should continue with following meetings to include experts in law, representatives from international, regional and national authorities, as well as researchers in the subject matters of the gaps identified;
- The IUCN should continue to raise awareness of the needs of protection of biodiversity in the eastern Mediterranean; and
- Greater awareness can be furthered through publications.

A workshop to examine the existing legal and institutional framework applicable to ABNJ in the southern Indian Ocean and to identify options to improve their management and governance was held 23-24 June 2011 at Rhodes University, Grahamstown, South Africa. Co-hosted by IUCN and the Agulhas and Somali Current Large Marine Ecosystems (ASCLME) Project, the workshop contributed to IUCN's implementation of a UNDP-GEF Medium-Size Project "Applying an Ecosystem-based Approach to Fisheries Management: Focus on Seamounts in the southern Indian Ocean." Two technical papers, to be published by IUCN, served as background documents, i.e., ‘Legal and Institutional Gap Analysis’ by Robin Warner, Philomène Verlaan and Gail Lugten, and ‘Anthropogenic Threats to Seamount Ecosystems and Biodiversity’ by Philomène Verlaan, Alex D. Rogers, and Garry Preston. Among the workshop's outcomes are recommendations to improve the regional management and governance framework, which include the need to:

- Shift current sectoral orientation to a broader regional ecosystem management approach to all activities that represent risks to biodiversity and ecosystem functions in the Indian Ocean, noting that fisheries is an important component.
- Enhance cooperation between existing bodies and organisations and other stakeholders, rather than creating a new body, and explore the development of an alliance for effective management and governance of ABNJ in the region.
- Encourage implementation of existing relevant instruments, including applicable UN Resolutions.
- Encourage entry into force of the South Indian Ocean Fisheries Agreement and update the 2006 interim measures in accordance with the 2009 FAO Guidelines.
- Remove market inefficiencies, e.g., subsidies, from industrial fishing operations in ABNJ.
• Cooperate with the CBD Secretariat and FAO in the identification of Ecologically and Biologically Significant Areas and Vulnerable Marine Ecosystems in the region.
• Encourage relevant regional bodies to explore the feasibility and appropriateness of expanding their existing mandates to address ecosystem management in ABNJ.
• Support negotiations under the auspices of the UN to draft a multilateral agreement under the Law of the Sea Convention on conservation of biodiversity in ABNJ.

Other activities of the Specialist Group included its active contribution to the IUCN Academy of Environmental Law’s Ninth Colloquium, “Water and the Law: Towards Sustainability”, held in South Africa 3-7 July.

In addition to this, three Specialist Group members joined the IUCN delegation to the 11th meeting of UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), 20-24 June. The IUCN’s statement to UNICPOLOS suggests that among other issues, climate change and particularly ocean acidification could benefit from future work of the General Assembly on oceans and law of the sea.

The Oceans Specialist Group also joined the High Seas Alliance, a coalition of groups and organisations committed to improving the governance of the high seas.

(iii) Ecosystem Services

The ELP and the IUCN Academy of Environmental Law held a joint-workshop in July 2011 in Mpekweni, South Africa, entitled “Towards the legal recognition and governance of ecosystem services”. The workshop took place before the start of the annual colloquium organised by the IUCN Academy. The aim was to analyse judicial decisions recognising ecosystem services as such, as well as existing legal frameworks for the recognition and governance of specific ecosystem services. The papers presented during the workshop were then reviewed and will be published in a special edition of the Potchefstroom Electronic Law Journal in 2012.

(iv) Protected Areas

In early 2010, the World Commission on Protected Areas (WCPA) Steering Committee and the Commission on Environmental Law (CEL) Steering Committee decided to replace the Task Force on Protected Areas Legislative Frameworks with a joint WCPA/CEL Specialist Group on Protected Areas Law and Policy. The group comprises some 30 lawyers and protected areas specialists.

The year 2011 was marked by the collaboration between members of the joint Specialist Group and the ELC in a wide range of research proposals and projects. In cooperation with the Commission on Environmental Law (CEL), the World Commission on Protected Areas (WCPA) and the Global Protected Area Programme (GPAP) the ELC published Guidelines for Protected Areas Legislation, the result of a major four year project which arose from a project coordinated by a Steering Committee, drawn from CEL and the WCPA. The Guidelines are illustrated by 15 case studies drafted by some members of the Specialist Group. These case studies focus on protected areas legislation enacted in different jurisdictions and regulating different types of protected areas.

The Guidelines were developed to provide information and guidance on key elements of a modern and effective legal framework, attuned to the present roles and corresponding diversification of protected areas, as well as to the emergence of new scientific understanding about protected areas management and new governance approaches. The English version of the guidelines
became available in May 2011 and was widely distributed. The Guidelines were also published on the IUCN website, where they are available for download. French and Spanish versions are due to be published in 2012.

As a complement to the Guidelines for Protected Areas Legislation, a concept paper on the legal aspects of connectivity conservation was initiated. It focuses on identifying what legal measures are best suited to operate linkages between protected areas through ecological networks and other forms of connectivity conservation at local, national, and regional levels. After a study of relevant initiatives in Africa, Asia, Europe and Mesoamerica and an analysis of the legal frameworks of these initiatives an outline was developed for the concept paper. A group of experts from the ELC and the joint WCPA/CEL Specialist Group on Protected Areas Law and Policy was formed to lead the process. At the end of the year, a first draft of the paper was available for internal review and five case studies were selected for later development.

The Guidelines for Protected Areas Legislation mentioned previously also provided a basis for in-country projects to assist in developing or improving protected area (PA) legislation, and for endogenous capacity-building initiatives. One such project focused on Timor-Leste and the Dominican Republic, both countries having requested legal technical assistance to improve their PA legislation and adapt it to the new challenges of climate change. Project planning and implementation in both countries is the result of close cooperation between the ELC, the respective Governmental competent authorities of each country, and the concerned IUCN Regional office. At the end of 2011, all steps setting the stage for discussion of, and decision on, new legislative/regulatory measures had been taken.

The ELC has also continued its studies on the institutional and legal frameworks for the establishment and management of protected areas in Africa. Initiated in 2010, the studies cover two regions: West and North Africa. With the support of the IUCN programme for Central and West Africa (Programme d´Afrique Centrale et de l´Ouest – PACO), the first study focused on Burkina Faso, Ghana and Ivory Coast, and involved national consultants in the project countries. The consolidated report has been published under the PAPACO series at www.papaco.org.

In collaboration with the IUCN Centre for Mediterranean Cooperation (IUCN-Med), the ELC expanded the work it had undertaken on protected areas in North Africa. In 2010, in conjunction with a national consultant, the ELC analysed the Tunisian legal framework for protected areas and made recommendations for strengthening and adapting the legislation to IUCN PA management categories. The final conclusions and recommendations of the study on protected areas legislation were shared during a regional workshop in December 2010 in Tunis, organised by the Ministry of Environment of Tunisia.

In January 2011, contacts were made with legal professionals in two other northern African countries, Morocco and Algeria in order to develop a study on the legal and institutional frameworks for the good governance of oases in those countries.

The ELC also collaborated with IUCN-Med in the project “Integrating energy efficiency and biodiversity aspects in the tourism sector in north Africa for a contribution to the sustainable development of local communities”. The ELC provided technical assistance to develop an analysis of the institutional and legal frameworks related to ecotourism and PAs in Morocco and Tunisia and to identify the limitations to the development of ecotourism and its impact on PAs. A regional workshop is planned for 2012 to present the final outcomes of this analysis.
Work on Integrated Climate-Conservation Spatial Planning as a new conceptual area has been underway since early 2011. The ELC continues to engage with colleagues from a host of IUCN global programmes and members of CEL and the Academy of Environmental Law on ways to further develop this area of work in the near future.

(v) Species

In September 2011, a Memorandum of Understanding was signed between the IUCN Environmental Law Centre (IUCN ELC) and the CMS (Convention on Migratory Species) Family Secretariats of CMS, AEWA, EUROBATS and ASCOBANS. This Memorandum established a framework for continued cooperation on legal matters.

The IUCN ELC will continue providing the CMS Family Secretariats with legal assistance upon request. This includes analyzing the existing gaps to determine the potential benefits of new CMS instruments, drafting new CMS instruments, and assessing implications of the potential structural changes of the CMS Family. This might include the amendment of the Convention or Agreement Text, the geographical coverage of existing CMS instruments or the merger of their Secretariats.

In addition to this, the ELC, as part of the IUCN delegation, attended the Tenth Meeting of the Conference of the Parties to CMS, which took place in Bergen, Norway from 20 to 25 November 2011.

(B) Climate Change

The Law Programme also worked on climate change, one of the most pressing challenges to global sustainability. This included a project to integrate existing laws on biodiversity and climate change into a framework law for climate change adaptation at national and international levels.

This project has three phases: first, at the international level, legal experts identified and recommended areas for the integration of multilateral environmental agreements (MEAs) in climate and biodiversity adaptation work. Second, the project aimed to develop a “comparative toolbox” of best practices in climate adaptation law by analysing mechanisms which contribute to climate adaptation from a wide range of countries (Asia, Europe and the Americas). As part of this component the ELC drafted an overview of adaptive management in the United States. Third, work has been conducted under the coordination of the IUCN Eastern and Southern African Regional Office (ESARO) in conjunction with authorities and stakeholders at a national level in Mozambique, Tanzania and Zambia. The ELC finalized the project website (www.adaptationlaw.org) to be used by the project team and the general public.

Work on the joint-project between the ELC and the IUCN Regional Office for Mesoamerica (ORMA) entitled “Climate Change Governance Capacity: Building regionally and nationally tailored ecosystem-based adaptation in Mesoamerica” continued throughout the year. The goal of the project is to develop climate change governance capacity in the water sector through applied research, awareness-raising and increased public participation. Under this project, the ELC drafted a support agreement and statutes to the already existing “Cooperation Treaty for Development of the Frontier Regions between Costa Rica and Panama”. The statutes were drawn up as a means to empower local stakeholders in border regions as well as to mainstream ecosystem-based adaptation at the local level. The ELC participated in the 2011 Integrated Water Resources Management (IWRM) Conference held in Dresden and presented the work undertaken under this project, in
Mesoamerica, which focused on a case study of the Lower Yorkín, a transboundary micro-watershed located in the Sixaola River Basin.

Throughout the spring of 2011, the ELC worked to revise the initial draft of the paper “REDD+ Benefit Sharing: A Comparative Assessment of Three National Policy Approaches” commissioned by UN-REDD and presented in December 2010 at the Cancun workshop of the REDD+ Partnership. Following a thorough peer review, the paper was finalized and released publicly in June 2011.

The ELC also participated in two workshops on climate change mitigation and adaptation, organized by the climate change network and Forest Programme of IUCN, one in April and one in May. In April, the workshop aimed to develop a Trans-Regional Climate Adaptation Initiative (TRIA) across IUCN regions and thematic programmes. In May, the aim was to reach a common understanding on IUCN’s vision on REDD-plus and to agree on global guidelines (programmatically and operationally).

The ELC started working with the global legislators’ organisation GLOBE International in 2011, in order to prepare the “GLOBE Climate and Forest Legislation Study” – a detailed series of studies on REDD+ legal frameworks in four key forested developing countries – Brazil, the Democratic Republic of Congo, Indonesia and Mexico. These studies will be aimed primarily at legislators from countries that are part of the GLOBE Legislators’ Forest Initiative (GLFI). The GLFI REDD+ legal studies will build on past and ongoing REDD+ legal reports focusing in greater detail on how to integrate REDD+ national planning strategies into legal frameworks. This will be accomplished in two phases: via focused gap analyses and through guidelines for the development of legal frameworks. The ELC presented the first set of national reports as well as a global comparative report in Cape Town at a meeting of GLOBE International Parliamentarians on December 3rd and in the periphery of the UNFCCC COP 17 via a poster presentation at Forest Day 5 on December 4th.

The most significant activity of the CEL Specialist Group on Energy Law and Climate Change for the year 2011 was the preparation of case studies analysing renewable energy initiatives in developing countries for the United Nations Department of Economic and Social Affairs (UNDESA) and the International Renewable Energy Agency (IRENA), for publication at the United Nations Conference on Sustainable Development, in Rio in 2012. These studies were prepared by nationals from many different countries, namely from China, India, Brazil and Pakistan. Other country programs included Indonesia, Morocco, Turkey, and Kenya. In addition to this, studies of Geo-engineering and Horizontal Hydrofracking for Natural Gas were completed.

The Specialist Group welcomed new members from Argentina, Iceland, the UK, Germany, Pakistan, and Canada.

(C) Ethics

The two main projects of the Ethics Specialist Group (ESG) of the IUCN Commission on Environmental Law (CEL) are: (1) the Biosphere Ethics Initiative – seeking to highlight ethical principles in action around the world; and (2) the Earth Democracy project – seeking new or modified forms of governance that would allow for a flourishing, sustainable future for the entire community of life.

The Jordan Relato of the Biosphere Ethics Initiative (BEI) took place in May 2011;
launching an environmental ethics program to help influence local, state and international law and policy. The Relato was hosted by the Amman-based World of Letters, with support from the Center for Humans and Nature and the IUCN CEL ESG, and under the Patronage of Her Royal Highness Princess Alia Al Hussein. Government, Royal Family and NGO leaders from around the country came together with BEI leaders to discuss particular environmental ethics initiatives in Jordan, and to see these ethical principles in practice. Issues discussed included issues of water scarcity and peace at Wehdah Dam, the Jordan River and Sharharbil bin Hassneh EcoPark; to community history/culture/reliance on water at Azraq Wetland Reserve; to environmental education and sustainability at Feynan EcoPark; to wildlife protection at the Princess Alia Foundation; and plant species protection and community employment at the Royal Botanic Garden.

In July, several members of the Ethics Specialist Group met in Prague, Czech Republic to discuss the Earth Democracy project and several white papers. They also attended the annual meeting of the Global Ecological Integrity Group, “Human Rights and Duties: Supporting Biological Integrity for Public Health” at Charles University.

In August, the Ethic of the Indiana Dunes Region was launched alongside a showing of the Aldo Leopold film, Green Fire. The Indiana Dunes Relato was held in September 2010 and was the first Local Ethic developed under the BEI Relato methodology. The Local Ethic is available at www.humansandnature.org.

The publication of a book on the Ethics Specialist Group’s two projects has been approved for funding by the Center for Humans and Nature, and is expected to be launched at the 5th IUCN World Conservation Congress in Jeju, in 2012. The publication will discuss the history of the world conservation movement and offer practical examples of how communities around the world are using ethics to guide actions.

In October, the BEI group met in Brazil for the Rio State Relato, hosted by the Centre for Applied Sustainability. This Relato led to several site visits including Nova Friburgo (the location of deadly floods and landslides in early 2011) to Gramacho Landfill and Mesquita. As with the Jordan Relato, water was a key issue for communities. Solid waste, recycling, local governance and social economic justice were also major facets of the Relato.

(D) Rights-Based Approaches to Conservation

In the context of livelihoods and human well-being, new responsibilities and rights in environmental governance have emerged in the recent years. Rights-based approaches (RBAs) are being promoted as a way to effectively reconcile development, conservation and rights of people, and to realize their positive synergies.

Based on the IUCN Resolutions 3.015 “Conserving Nature and Reducing Poverty by Linking Human Rights and the Environment” and 4.056 “Rights-based Approach to Conservation”, the IUCN Environmental Law Centre (ELC) has undertaken great efforts during the last 5 years to provide legal research and analysis and to build capacity in the area of RBAs to conservation. Within the framework of the project “Rights-based Approach: CBD COP 9 and beyond” supported by the German Federal Ministry for Economic Cooperation and Development (BMZ), the ELC developed a so-called step-wise approach for implementing RBAs to conservation which was presented in different international and national forums and is further explained in the IUCN publication entitled “Conservation with Justice – A Rights-based Approach” (Greiber, T. (ed.) 2009. Conservation with Justice – A Rights-based Approach, IUCN, Gland, Switzerland).
In 2011, building on the ELC’s work on RBA, the ELC began work implementing a new project entitled “Applying Rights-Based Approaches: from Theory to Practice” in conjunction with three IUCN Regional Offices (Mesoamerica, South America and Asia), which aims at applying RBAs to conservation in practice and disseminating related information in order to secure the rights of vulnerable communities, improve their livelihoods and promote conservation of biodiversity and ecosystem services. The objective of the project, supported by the German Ministry for Economic Cooperation and Development, is to apply different steps of the step-wise approach in practice in order to test their efficiency and to gain further RBA-experiences; and facilitate the exchange of experiences, methods, and tools on RBAs to conservation in order to improve understanding and knowledge of this concept.

The project is comprised of several components: practical RBA to conservation work in field sites in Lao PDR, Honduras and Ecuador, as well as RBA to conservation capacity building, awareness raising and policy development work at the global level through the RBA Internet portal. The IUCN’s rights-based approach to conservation Internet portal (www.rights-based-approach.org), a platform which aims to collect and share RBA-related information, was further developed. A number of improvements were made in 2011 including an upgrade of its software, greater ease of access to the blog, the development of a mind map of articles on the RBA Wiki section and the inclusion of an FAQ page as well as an inventory of past and present work of diverse actors, links to journals, guides and organisations working on similar issues. A number of case studies have also been added to inform and assist on tools for RBA implementation.

The Specialist Group on Indigenous Peoples, Customary Law and Human Rights (SPICEH) was established in late 2011 as a joint initiative of the Commission on Environmental Law (CEL) and the Commission on Environmental, Economic and Social Policy (CEESP) of IUCN.

The new specialist group aims to create a participatory process to support and to advise IUCN and its membership on indigenous peoples, customary and environmental law and human rights law issues related to conservation. The Specialist group’s mandate focuses on the implementation of relevant elements of the post-Whakatane mechanism, on monitoring and reporting on the implementation of relevant IUCN Resolutions and on collaborating with key CEESP themes to profile and progress SPICEH issues. The aim of the Whakatane Mechanism is to assess the situation in different protected areas around the world to see if people are negatively affected and to propose and implement solutions as appropriate.

(E) Inland Water

2010 was marked by the United Nations General Assembly’s explicit recognition of the right to water and sanitation in Resolution 64/292. Progress continued in 2011 where over 550 people representing diverse stakeholder groups, including IUCN, gathered in Bonn, Germany, to assist and participate in a conference called “The Water, Energy and Food Security Nexus – Solutions for the Green Economy”. The nexus emerged because of the need to find solutions to the impacts of current global trends such as population increase and the growing pressure on and demand for energy, food and water. The ELC took part in the 13th Water and Nature (WANI) meeting, held in Costa Rica in October, during which the water, energy and food security nexus was one of the core themes on the agenda. Each year, the IUCN Global Water team meets to discuss progress and set new strategic objectives for the water programme portfolio.

The BRIDGE project (Building River Dialogue and Governance) was officially launched in
August 2011 during World Water Week in Stockholm, Sweden. It focuses on water diplomacy and governance in transboundary hotspots and aims to ensure that reforms are coordinated across borders and are internally consistent. The project’s objective is to promote Integrated Water Resource Management (IWRM), as well as sustainable water management practices. One target is to develop new training materials based on IUCN water law publications as well as on WANI Toolkits. A “Regional situation analysis” is to be developed for each target region, (South America, Mesoamerica and Asia) and will provide an analysis of the legal and policy mechanisms that regulate the basins (or tributaries in the case of Mekong) in each selected region.

A Water Law Helpdesk was set up as part of this project to serve as a hotline through which users will be able to ask legal questions on the joint-management of shared water resources. They will be able to ask for support in the development of agreements, codes of conduct or the creation of a Bi-national Commission. The helpdesk will also provide useful resources such as case studies, guidance documents and a glossary, and other related information which goes beyond the BRIDGE project.

As part of its work on hydro-diplomacy, the ELC gave a presentation on the issue of “Negotiating Transboundary Watercourse Agreements” at the 2nd Annual International Law and Transboundary Freshwater Workshop organized by the IHP – HELP Centre for Water Law, Policy and Science at the University of Dundee, under the auspices of UNESCO. The event was an opportunity for the ELC to showcase what IUCN is doing on transboundary water law and how it is working on innovative mechanisms for community-based cross-border cooperation and benefit sharing.

During the course of 2011 the CEL Specialist Group on Water and Wetlands (SGWW) established three Sub-groups: Climate Change – Adaptation and Mitigation, Legal and Institutional Arrangements for Transboundary Water Cooperation, and The Human Right of Access to Water and Sanitation. Co-chairs were appointed to each Sub-group and each prepared a detailed Work Plan to Guide its work. In addition, the SGWW established an Executive Committee of 22 members to carry out an initial review of outputs produced by the Sub-groups.

In June 2011 the SGWW Chair met with the Senior Legal Specialist from the Organisation of American States’ (OAS) Department of Sustainable Development in order to discuss the development of case studies regarding the legal and institutional frameworks of the basins in which the OAS had development interventions since the early 1960s.

(F) Soils

During 2011 the CEL Soil Specialist Group for the Sustainable Use of Soils and Desertification was active at the national and international level. As global interest continues to grow in the investigation of an international instrument for soil, a number of new and continuing initiatives in national soil legislation and policy reform developed. The draft Protocol for Security and Sustainable Use of Soil, prepared by the Specialist Group in 2009, was discussed at three international forums during 2011. This draft was prepared specifically in response to the UNCCD’s 10 Year Strategy and Framework (2008-2018).

At the national level the principal areas of interest include Northeast and Central Asia. A Soil Specialist Group member visited Mongolia in February, June and November 2011 to further assist with the review of environmental laws under the Government’s Action Plan of 2008-2012. In particular this included the draft Soil Protection and Desertification Prevention Law and the draft
Pastureland Law. The adoption of the desertification prevention and soil protection legal framework and an increase in training and awareness on combating desertification is a key aspect of the Plan. In addition, a Soil Specialist Group member is assisting the Government develop a Nationally Appropriate Mitigation Action (NAMA) for sustainable management of the Steppe grasslands. This activity is following the UNFCCC NAMA process commenced at Bali COP and further developed at Copenhagen, Cancun and Durban COPs. The NAMA defines the legal and policy framework to sustainably manage the grasslands.

Soil Specialist Group members continued with law reform assistance to the governments of Kyrgyzstan and Tajikistan. In June 2011 Soil Specialist Group members assisted the Government of Tajikistan with the preparation of a new Tajik Pastures Law, to improve grazing management and soil erosion control in the high mountain pastoral areas. A paper was presented to a conference in Dushanbe on international and national experiences in law and policy for management of pastureland with implications for Tajikistan. In September 2011 a capacity building workshop was held in Bishkek to introduce to Kyrgyz and Tajik legal officials a framework and technical guidelines for monitoring the implementation of legislation, and for participatory development of new legislative proposals, relevant to sustainable management in the High Pamir-Pamir Alai Mountains.

In September 2011 a Soil Specialist Group member participated in a meeting in Berlin organized by the German Federal Environment Agency to present options on a global agreement for Security and Sustainable Use of Soil. The main outcome of the meeting was the document “Protecting Soils for our Common Future: Call for Action”, which urges the UN Rio +20 Conference June 2012 to - “recognize that a coordinated global science and policy and legal approach is there fore required to ensure that soils are used, managed and restored according to principles of ecosystem resilience”. In October 2011, Soil Specialist Group members participated in the Third Worldwide Conference of Environmental Law NGO and Lawyers in Limoges, France to present the case for a Soil Convention. The recommendation for a Convention on Protection of Soils was included in the conference’s Call for Action to be delivered to the participating states of the Rio +20 Conference. A further presentation was made to the Land Day side-event at UNFCCC COP in Durban in December 2011 on the conservation of soil through international law.

(G) Cross-cutting issues in environmental law

(i) Intergovernmental platform on Biodiversity and Ecosystem Services (IPBES)

In December 2010, the UN General Assembly adopted a resolution acknowledging the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) as agreed during an International Expert meeting held in Busan, Korea (Busan outcome document, June 2010). IPBES is a newly created intergovernmental body which provides an interface between the scientific community and policy-makers and aims to build capacity and strengthen the use of science in policy-making (e.g. by performing assessments, enhancing knowledge generation, supporting the formulation of policies). IUCN participated in discussions on the establishment of IPBES and provided support to its operationalisation in 2011 by defining the rules and procedures for multi-stakeholders to ensure appropriate representation and meaningful participation in IPBES governance. To support the delivery of this action, the ELC and the IUCN Global Policy Unit developed a draft set of rules and procedures for civil society’s involvement in IPBES governance, which was presented at the 1st IPBES plenary meeting held from 3-7 October 2011 in Nairobi, Kenya.
(ii) Activities of the CEL Specialist Group on Armed Conflict and the Environment

Natural resources are relevant to all stages of the conflict cycle – contributing to the causes, financing, and conduct of conflict and to peace-building after conflict. In 2011, the IUCN CEL Specialist Group on Armed Conflict and the Environment worked on two primary themes: (1) legal protection of the environment in times of armed conflict, and (2) the role of natural resources in post-conflict peace-building.

In March 2011, the SG convened a workshop at the IUCN Environmental Law Centre in Bonn to consider controversial questions of the *lex lata* and to collect ideas on possible suggestions for the development of international law protecting the environment during armed conflict. The workshop highlighted the fact that the explicit rules of international humanitarian law protecting the environment in times of armed conflict are insufficient and unsatisfactory. Participants noted that the terms used to define a threshold beyond which the environmental damage becomes unlawful (widespread, long-lasting and severe) are both too restrictive and unclear. A new development, however, can be ascertained, namely a rule that in deciding on attacks, “due regard” must be had of the protection of the environment. The workshop also highlighted the possibility of protecting elements of the environment as civilian objects. Furthermore, it becomes more and more accepted that multilateral environmental agreements continue to be applicable in times of armed conflict. It must be clarified, however, what that protection could mean in relation to the specific dangers arising out of armed conflict. Finally, it is necessary to establish procedures which would designate valuable elements of the environment to be demilitarized and thereby immunized against attacks. The participants of the workshop called on the SG to continue to work on these issues, also to increase participation by other relevant experts. The SG considered potential international forums where political and other action may be undertaken, including the 2012 World Conservation Congress.

The Specialist Group continued to work with the Environmental Law Institute, the United Nations Environment Program, the University of Tokyo, and McGill University to examine experiences in post-conflict natural resource management and peace-building. In 2011, Earthscan published the first in a series of six edited books: *High-Value Natural Resources and Post-Conflict Peacebuilding*, edited by Päivi Lujala and Siri Aas Rustad. Substantial progress was made on the other five edited books (covering Land, Water, Livelihoods, Assessment and Restoration, and Governance), as well as on a seventh book (published by Cambridge University Press) summarizing lessons from 150 case studies and analyses. The remaining books will be published in 2012. Together, the books represent the culmination of a four-year effort that the SG helped launch, and they will lay the empirical foundation for improving operational guidance, capacity building, technical assistance, and further research and analysis.

(iii) Activities of the CEL Working Group on the Non-Regression Principle


(iv) Activities of the CEL Specialist Group on Environmental Compliance
and Enforcement

At the 9th International Conference on Environmental Compliance and Enforcement held in Whistler, British Columbia, Canada, in June 2011, the Specialist Group on Environmental Compliance and Enforcement convened a workshop on the establishment of a network for prosecutors to develop and bring cases for environmental crimes, which are often organized internationally. As a result of strong consensus among participants concerning the need for international cooperation between environmental prosecutors and the value of sharing best practices, the International Network for Environmental Compliance and Enforcement (INECE) and IUCN-CEL agreed to jointly launch the Global Network of Environmental Prosecutors (GNEP), whose mission is to create linkages among environmental prosecutors around the world for the purpose of protecting the environment and human health, and to promote sustainable development.

GNEP’s principal objective is to build a global community of environmental prosecutors and to facilitate the exchange of tools, capacity building, and information that assists environmental prosecutors in their work. Recognizing the need for international cooperation, workshop participants suggested that collaborative efforts could include the organisation of integrated programs to fight serious types of organized environmental crime, as well as to search for and confiscate illegal gains, irrespective of the country in which they are found. There was agreement that despite procedural differences between countries, there is significant benefit to being able to work together informally with peer-level prosecutors in other countries. After the decision to launch GNEP was finalised, a small working group of environmental prosecutors was nominated to take the first steps.

(v) Greening the World Economy

IUCN and Holcim – one of the world’s leading cement and aggregate suppliers – began working together in 2007 with the aim of strengthening biodiversity management within Holcim’s operations. During the first partnership agreement (2007-2010), an IUCN-led Panel of Independent Experts developed an effective strategy for a Biodiversity Management System (BMS) within Holcim’s operations.

As a result of the first phase, the partnership was renewed for three years (2011-2013) with a view to ensuring the effective implementation of the BMS, demonstrating better biodiversity conservation and business outcomes to the Holcim Group as well as extending the approach to the wider building-materials sector.

In order to deliver on this, in July 2011 the ELC was requested to develop the policy component of the project partnership. A draft proposal on the envisaged methodology of work and expected deliverables was presented to the IUCN-HOLCIM Steering Committee. As a result of the discussions, it was agreed that the ELC would develop, based on the BMS, legal Guidelines that create a framework encouraging a company in the building-materials sector to operate in a way that integrates biodiversity into its business. Once the Guidelines are finalised, it is foreseen to conduct a pilot testing phase in Holcim countries of operation.

(III) Outreach and Capacity Building

(A) Outreach

(i) Interns
Seven interns from Europe, the Americas and Australia worked at the ELC in 2011. Coming from Australia, Canada, France, Germany, Hawaii, Mexico and the United Kingdom, they contributed to activities and projects of the ELC for periods of three to six months. Interns worked on diverse topics including: access and benefit sharing; water governance; rights-based approaches to conservation; guidelines for protected area legislation; and climate change adaptation.

(ii) Lectures on International Environmental Law

As every year, the ELC delivered a Master’s programme course for the Institute for Technology and Resources Management in the Tropics and Subtropics (ITT) in the Cologne University of Applied Sciences. The course consisted of lectures on International Environmental Law, Biodiversity Law, and Climate Change Law. Role plays were used to facilitate the understanding of students on issues such as protected areas and a climate change negotiation for a post-2012 agreement of the UNFCCC.

Furthermore, the ELC contributed to a number of lectures and seminars, such as the “Module on International Nature Conservation” organized at the International Academy for Nature Conservation on the Isle of Vilm, Germany, from 4-9 April, 2011; or the Joint Course of the Integrated School of Ocean Sciences (ISOS) and Bremen International Graduate School for Marine Sciences (GLOMAR) on “Marine Conservation: Seminar for PhD candidates in Marine Sciences” from 19-21 August, 2011 on the Isle of Sylt, Germany.

(iii) CEL’s Group of Young Professionals

2011 was a year for consolidating the efforts of CEL’s Young Professionals Group (YP Group), which was initially created in 2009. The group has now 40 members from 15 countries and for the first time, CEL’s Young Professionals Chair participated virtually during CEL’s annual Steering Committee meeting. As a result of the participation in the meeting, the Commission began establishing an agreement with the American University Washington College of Law to provide scholarships to the Summer Session on Environmental Law for members of the Young Professional Group as a first prize award for CEL’s Alexandre Kiss Awards.

Information sharing and debates were undertaken through e-mails and the YP Group’s Facebook group making its members more aware of current environmental policy debates and the way IUCN operates. Virtual meetings were also organized to foster collaboration on specific issues. Finally, the group also allowed its members to organize side-events between those who attended specific conferences. In Sao Paulo for instance, a meeting was held between Ever Martínez (Paraguay), Pablo Lorenzetti (Argentina), Gustavo Rinaldi (Argentina), and Federico Zonis (Argentina). That meeting has allowed the group to promote specific activities and make arrangements for organizing a meeting between those who will be attending the Rio+20 conference.

Among other highlights of 2011, the members of the YP Group were active collecting judicial decisions related to the environment and drafting summaries that fed into the Judiciary Portal managed by CEL. Also, significant efforts were undertaken within other IUCN Young Professionals Groups and as a result a Task Force on Intergenerational Partnership for Sustainability was established.

For the first time, the YP Group also encouraged young professionals to run for the position
of IUCN Regional Councillor in order to have youth better represented at IUCN Council Meetings and provide opportunities for more active engagement.

(B) Capacity Building

(i) Environmental Law Information Services – ECOLEX

The ELC acts as the management unit of ECOLEX - the gateway to environmental law - an Internet-based, non-profit information service on environmental law operated in partnership between IUCN, FAO and UNEP. ECOLEX offers global coverage for the entire range of environment and natural resources related subjects.

In 2011 ECOLEX gained significantly in visibility, the Management Unit having been in touch with all IUCN communication coordinators in regions, as well as with over 700 CEL members and about 100 official UNEP focal points around the world to publicize ECOLEX. Numerous contacts agreed to implement the ECOLEX link on university and organisation’s websites and to promote ECOLEX in their institutions or departments.

ECOLEX is an interface which draws the data it makes available on the internet from two information systems: the IUCN’s Environmental Law Information System (ELIS), also used by UNEP, and FAOLEX. ISIS, the software on which both ELIS and FAOLEX are based, went through a significant re-engineering, enabling welcome improvements in the ELIS and FAOLEX application. The new ISIS software became available mid-year and was installed at FAO for the legislation data base during the second half of the year. It will be implemented in ELIS in 2012.

Beneficial synergies between ECOLEX and other UNEP supported systems related to knowledge management in the field of environmental law, governance and conventions have been discussed with their stakeholders. Mutual access of selected data between ECOLEX and InforMEA, the information system developed by and for MEAs (www.informea.org) was agreed, and is being tested. Future facilitation mechanisms of synergies between environmental law and policy relevant information systems are now being investigated, e.g. the creation of a joint keyword catalogue on environmental law.

(IV) Publications in 2011

- International Council of Environmental Law (ICEL) (2011). Arctic Policy & Law: References to Selected Documents. Prepared by the International Council of Environmental Law (ICEL) for the Arctic Task Force of the IUCN Commission on Environmental Law (IUCN-CEL). Bonn, Germany: ICEL. With more than 300 entries, accompanying summaries and references to their source, the publication compiles all available material concerning the governance policies in place, those policy options proposed, and gap analysis studies of governance along with a host of other relevant documents related to key topics in the Arctic. Divided by year, material spans the period from 1920-2011 and use is eased through a thorough keyword index, a separate index according to the State of origin or relevance and a list of abbreviations.

- Governance of Shared Waters – Legal and Institutional Issues (IUCN EPLP No. 58). This book seeks to reposition law as a tool for providing justice by seeking to ensure individuals have access to the services that ecosystems naturally provide, and guaranteeing the right to water for human well-being. The goal of the publication is to contribute to a better understanding of the
legal and institutional arrangements necessary for promoting good governance of transboundary waters between two or more States. The ultimate aim of this book is to try and strengthen the capacity of various stakeholders, and to help reach the ideal that water should be considered as a vehicle for integration rather than as a source of conflict.

- **Marcos Jurídicos en material de REDD – Diseño e implementación en el nivel nacional** (IUCN EPLP No.77) The IUCN Environmental Law Centre (ELC) released the Spanish version of the publication “Legal Frameworks for REDD: Design and Implementation at the National Level”. This publication identifies and analyses issues relating to the formulation and execution of laws and regulations for REDD at the national level. It was developed in collaboration with international and national REDD legal experts and includes case studies from Brazil, Cameroon, Guyana and Papua New Guinea.

- **Governance of Ecosystem Services – Lessons learned from Cameroon, China, Costa Rica and Ecuador** (IUCN EPLP No. 79). The aim of this publication is to suggest ways for more effective governance of ecosystem services by examining the relevant legal and institutional frameworks of Cameroon, China, Costa Rica and Ecuador, identifying the gaps that exist and making recommendations for improvement.

- **Law, Policy and Dryland Ecosystems in the People’s Republic of China** (IUCN EPLP No.80) The publication was co-edited by Ian Hannam and Du Qun, respectively the Chair and former Co-Chair of the Sustainable Soils and Desertification Specialist Group of the IUCN Commission on Environmental Law (CEL). The book also represents the fruits of a successful collaboration between environmental law specialists from the People’s Republic of China (PRC), the Global Environment Facility (GEF), the Asian Development Bank (ADB) and the IUCN Environmental Law Programme (ELP).

- **Guidelines for Protected Areas Legislation** (IUCN EPLP No. 81). The material, including 15 case studies, was published in book and disk form. In addition, an internet version is at http://data.iucn.org/dbtw-wpd/edocs/EPLP-081.pdf

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